

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTON

APPEAL NO.644 OF 2007
IN
NOTICE OF MOTION NO.860 OF 2005
IN
SUIT NO.2028 OF 1993

Sami A. Kungle .. Appellant.

Versus

Tilak V. Amin & 3 ors. .. Respondents.

Mr.A.P. Rage for the Appellant.

Mr.R.S. Deshpande for the respondents.

CORAM : F.I. REBELLO &
J.P. DEVADHAR, JJ.

DATED : 24TH OCTOBER, 2007.

P.C. :

1. The appellant herein is plaintiff, whereas the respondent is defendant in the Trial Court. The suit by the plaintiff is for recovery of possession on th ground that the respondent had unlawfully trespassed into the suit property and dispossessed the appellant. The claim of the appellant proceeds on the basis that he is a member of the co-operative society. On the other hand, contention of respondent No.1 is that he is also member of the society and, therefore, the respondent No.1 is entitled to continue in possession. In the motion taken out, apart from the plea of Receiver, the appellant also prayed for injunction against

respondents from creating third party rights. It appears that the suit property was subject matter of another suit, where the Receiver had been appointed, which receiver has subsequently been discharged.

2. The notice of motion taken out by the appellant herein came to be disposed of by the learned Single Judge by order dated 5th October, 2007. The learned Judge proceeded on the footing that the appellant herein was only praying for the relief of receivership and consequently for the reasons recorded refused to grant the relief and disposed of the notice of motion. As regards the issue of receivership, we are of the opinion that the findings recorded by the learned Single Judge cannot be faulted with at least at the interim stage.

3. The other issue was the matter of granting interim protection. This aspect, it appears has not been considered by the learned Single Judge, though according to counsel, such a relief had been prayed and also argued. Since there are rival claims and the case of the appellant that he was dispossessed physically from the suit premises by the respondent, in our opinion ends of justice will require that the property be protected so that no third party interest be created during the pendency of the

proceedings.

4. In the light of above, in our opinion, interim relief in terms of prayer clause (d) will have to be granted. Prayer clause (d) read as under :

"(d) That pending the hearing and final disposal of the suit, the defendant No.1 and 2 their servants and agents be restrained by an order and injunctions from in any manner alienating, encumbering, creating any third party right, parting with possession of the suit premises viz. Flat No.A/19 in building No.'A' constructed on plot of land bearing Survey No.141-A, plot No.131, situated lying and being at village, Ambivali, Andheri (West), Bombauy - 400 058".

5. To the above extent, though we are concur with the findings of the learned Single Judge on the issue of receivership, we set aside the order and grant interim relief in terms of prayer clause (d) as reproduced above.

6. With these observations, the appeal disposed of accordingly.

(F.I. REBELLO, J.)

(J.P. DEVADHAR, J.)